



BILLING CODE: 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent to Prepare an Environmental Impact Statement for an Easement to Cross under Lake Oahe, North Dakota for a Fuel-Carrying Pipeline Right-Of-Way for a Portion of the Dakota Access Pipeline.

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Army Corps of Engineers (Corps), as lead agency, will prepare an environmental impact statement (EIS) pursuant to court order to evaluate granting an easement to Dakota Access, LLC to cross federal land administered by Corps for the Oahe Dam and Reservoir Project on the Missouri River. This notice opens the public scoping phase and invites interested parties to identify issues and reasonable alternatives to the proposed action that should be considered in the EIS.

DATES: To ensure consideration during the EIS process, written comments on the scope of the EIS must be received no later than October 26, 2020. Due to the ongoing coronavirus (COVID-19) pandemic, virtual scoping meetings will be held in lieu of in-person scoping meetings. Virtual scoping meetings will be held on October 15 and 16, 2020. Additional information is included under “Public Scoping.”

ADDRESSES: Scoping comments can be submitted by mail or email. Please do not submit comments on USB, hard drive, or other portable storage devices.

Scoping comments can be mailed to: U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO-PM-A-C (DAPL NOI), 1616 Capitol Avenue, Omaha, NE 68102.

Scoping comments can also be emailed to: NWO-DAPL-EIS@usace.army.mil

If emailing comments, please use “Scoping Comments, Dakota Access Pipeline Crossing” as the subject of your email.

FOR FURTHER INFORMATION CONTACT: Heath Kruger, U.S. Army Corps of Engineers at (402)-995-2036 or by email at: NWO-DAPL-EIS@usace.army.mil

SUPPLEMENTARY INFORMATION: On July 25, 2016, the Corps granted permission to applicant Dakota Access, LLC, under Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. 408 (408 permission), for a proposed pipeline crossing under Lake Oahe approximately 0.5 miles upstream of the northern boundary of the Standing Rock Reservation. The approximately 1,172-mile pipeline connects the Bakken and Three Forks oil production areas in North Dakota to an existing crude oil market near Patoka, Illinois.

The 408 permission was supported by a Finding of No Significant Impact (FONSI) based on an Environmental Assessment (EA), as contemplated under the National Environmental Policy Act (NEPA). This EA/FONSI was completed on July 25, 2016, the date that the Corps granted the 408 permission. On February 8, 2017, the Corps granted an easement, with conditions, to cross federal property administered by the Corps at Lake Oahe, North Dakota. The Corps granted the easement under the Mineral Leasing Act (MLA), 30 U.S.C. 185. The easement allowed for the installation, construction, operation, maintenance, repair, replacement and termination of a thirty-inch diameter horizontal directional drill buried oil pipeline for the purpose of transporting crude oil, and related facilities, at or under Lake Oahe Project in North Dakota, with a 50-foot wide width plus the ground occupied by the pipeline and related facilities. Operation of the pipeline began on June 1, 2017.

On March 25, 2020, the District Court for the District of Columbia ordered the Corps to prepare an EIS for this portion of the pipeline because the pipeline's "effects on the quality of the human environment are likely to be highly controversial." *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, No. 1: 16-cv-01534, Memorandum Opinion (D.D.C. March 25, 2020), ECF No. 496.

The proposed crossing of Corps-administered federal property requires the grant of a right-of-way (easement) under the MLA. Comments are invited to assist in identifying the scope of potentially affected environmental, social, and economic issues relevant to the potential grant of an easement and determining if there are reasonable alternatives to be considered in the EIS.

Consistent with the Court's decision, Dakota Access, LLC seeks an easement from the Corps for the original proposed project whose construction was completed on June 1, 2017. A decision on whether to authorize the pipeline to cross Lake Oahe at the proposed location would be based on: (1) the July 25, 2016, EA/FONSI; (2) the Corps' August 31, 2018, analysis on remand from a decision by the District Court; and (3) additional analysis developed through this EIS.

Scoping Process: As the lead federal agency, the Corps will also coordinate with the public, other state and local agencies, and Tribes in order to evaluate the range of actions, alternatives, and impacts of the proposed project. Consistent with the Council on Environmental Quality (CEQ's) NEPA implementing regulations, we anticipate that an EIS will analyze the following possible alternatives:

- 1) No action alternative, where the Corps would not grant an easement and would require restoration of the Corps-administered federal lands to pre-pipeline construction conditions;
- 2) The Corps would not grant an easement and would take no further action;
- 3) The Corps would grant the requested easement with the same conditions as the vacated easement; and

4) The Corps would grant the requested easement with additional conditions beyond those in the vacated easement.

As part of this notice, the Corps requests input on any additional potential alternatives.

Public Scoping: This notice also serves to inform the public that virtual public scoping meeting will be held during the 45-day scoping period. Virtual scoping meetings will be held on October 15 and 16, 2020 from 6:00PM to 9:00PM central time on each day. The meeting information can be accessed at <https://go.usa.gov/xG2Pt>. The Corps will use the comments received to assist in identifying the significant issues which should be addressed in the EIS.

Public Comment Availability: Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that your personal identifying information be withheld from public review, the Corps cannot guarantee that this will occur.

D. Peter Helmlinger,
Brigadier General, US Army,
Division Commander.

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